

# VAN MEER & BELANGER

A PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

215 COMMERCIAL STREET, 4<sup>TH</sup> FLOOR  
PORTLAND, MAINE 04101-4674

THOMAS J. VAN MEER  
NORMAN R. BELANGER  
RICHARD N. BRYANT  
BETTS J. GORSKY

2 MAIN STREET, SUITE 18-217  
BIDDEFORD, MAINE 04005-2069

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June 30, 2017

Zoning Board of Appeals  
City of Portland  
389 Congress Street  
Portland, ME 04101

RE: 4 Russell Street - Map 54, Block D, Lot 1

Dear Sir or Madam:

Please accept the enclosed eleven (11) copies of the practical difficulty variance application on behalf of New Day Farm, LLC with respect to its property at 4 Russell Street (Map 54, Block D, Lot 1). Your office has received a pdf of the entire application.

New Day Farm would like to develop on its property a 31' x 39' three-story, three-unit residential building fronting on Hill Street, including parking with a first floor garage accessed off Russell Street. The property is a corner lot in the R-6 Zone that according to City records is a vacant lot that is unbuildable under current zoning. Under the dimensional requirements for residential uses in the R-6 Zone found in Ord. Section 14-139(a), the property does not meet the minimum lot size, and the proposed building does not meet the minimum lot size per dwelling unit and exceeds the maximum lot coverage.

Under Ord. Section 14-135, the purpose of the R-6 residential zone is to "*set aside areas on the peninsula for housing characterized primarily by multifamily dwellings at a high density providing a wide range of housing for differing types of households. . . [and] In cases of qualifying small, vacant, underutilized lots located in the urban residential and business zone, to encourage new housing development consistent with the compact lot development pattern typically found on the peninsula.*

Some details of the development will turn upon conditions imposed in the permitting process and economic considerations at the time of construction. New Day Farm's due diligence indicates that any anticipated return on estimated development costs is likely not justified without a three-unit residential building. (See the attached projections.) Assuming even a conservative estimate of \$225/square foot, the construction cost for a two-unit building would be \$848,025, but would yield an anticipated sale price, net of commission of only \$16,000. That projection assumes no cost overruns or delays on the project and no downturn in the residential market, any of which are substantial risks of that would incur potentially enormous losses. The projection also ignores New Day Farm's initial investment in the land itself, resulting in a nearly guaranteed net loss on such a development. Construction costs for a single

family house are substantially similar to that of a two-unit building, though the anticipated sale price would be substantially less. Obviously, no rational developer would invest that much capital in a single-family or two-unit residence for what would be at best a nominal return, if not a substantial loss, against the panoply of risks involved.

After a number of alternatives were explored to meet the tight constraints of the property dimensions, New Day Farm's architect has produced a viable design for a three-unit building with two large apartments on the upper floors and a garage and one efficiency apartment on the ground floor. The \$933,775 construction cost for a three-unit building is nearly \$86,000 higher than for a two-unit. But the anticipated return (again assuming no overruns or delays and excluding the initial land cost) is a reasonable \$165,000. Obviously, larger buildings and/or more units would entail greater returns, though would require greater (and additional) variances from the current zoning. In short, it appears that a three-unit project is the only practical and economically viable residential use of the property.

However, the threshold issue for any residential development is the Zoning Board of Appeals' grant of a practical difficulty variance with respect to minimum lot size, minimum lot area per dwelling unit, and maximum lot coverage in the R-6 Zone.

According to the Assessor's database, the lot currently has an area of 1,900 square feet. New Day Farm's boundary survey (attached) has determined the area is 1,899 square feet. The variances from R-6 Zone dimensional requirements being requested are:

- (i) a variance of 101 square feet of lot area below the required 2,000 s/f minimum residential lot size, to reflect the 1,899 square foot surveyed area of the lot;
- (ii) a variance of 70 square feet (3.67%) of lot coverage area above the 1,139 square feet (60%) maximum lot coverage, to reflect a 1,209 square foot building covering 63.67% of the 1,899 square foot lot; and
- (iii) a variance of 92 square feet of lot area per dwelling unit below the 725 square feet minimum lot area per dwelling unit required, to reflect the 633 square foot of lot area per dwelling unit for a three-unit building on the 1,899 square foot lot.

The proposed multi-unit residential use would be a permitted use under Ord. Section 14-136(a)(2). The attached conceptual plan shows a building that New Day Farm has determined is the minimum size that offers a reasonable likelihood of a return on the investment and which, according to Zoning Administration, otherwise meets or exceeds frontage, setback and other dimensional requirements of the R-6 Zone. A larger footprint with a greater lot coverage would provide a greater economic return. But New Day Farm has proposed the smallest building it could economically justify in order to avoid the need for variances of the 5' side yard and 10' rear yard setbacks in the R-6 Zone, and to minimize the current lot coverage and minimum lot area per dwelling unit variance requests.

It should be noted that the front setback (along the northerly sideline of Hill Street) is consistent with the 0' front setback of the adjacent multi-unit residential building at 4 Hill Street (Map 54, Block D, Lot 2) and all the other residential properties on that side of Hill Street (separated from the property only by Russell Street). According to the Assessor's records, the lot coverage of the building on 4 Hill Street is 67.92% . New Day Farm's requested lot coverage variance is for less than half that. Several other residential lots in the neighborhood also exceed the R-6 Zone's maximum lot coverage. According to the Assessors' records, 4 Hill Street is permitted for an 11-to-20 unit residential building on a 2,850 square foot lot, which reflects a lot size per dwelling unit figure of between 142 square feet and 259 square feet, between 466 and 583 square feet below the 725 square feet minimum. New Day Farm's requested minimum lot area to dwelling unit variance of 92 square feet is a tiny fraction of that. Similarly, the 4-unit condominium at 18 Hill Street and the 5-to-10 unit residential buildings at 17 and 19 Hill Street all have substantially smaller lot size per dwelling unit figures than the variance requested for this property.

A strict application of the dimensional standards in the R-6 Zone would prevent development of the property for a permitted multi-family residential use. The economic return from a multi-family residential use is greater than any potential investment return as an unbuildable vacant lot. Unless the variances are granted to allow the proposed multi-use residential development, the value of the property as a vacant lot (currently assessed at \$52,400) will remain substantially lower than what it would be assessed at as a completed multi-unit residential building. In short, New Day Farm would suffer significant economic injury were it not able to develop the property as proposed.

The property meets the standards for practical difficulty variances in Ord. Section 14-473 (c)(3) as follows:

*1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood.*

The size of the lot which gives rise to the need for the requested variances is unique to this property and unrelated to the size of other parcels in the neighborhood or any other general condition of the neighborhood.

*2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties.*

Virtually the entire block on which the property rests, as with the adjacent Hill Street block across Russell Street, is occupied with multi-family, multi-story residential buildings, many of which appear grandfathered with respect to minimum lot size, maximum lot coverage and minimum lot area per dwelling unit. The neighborhood is a densely populated residential enclave within the Maine Medical Center complex. Across the street from the Hill Street frontage of the property is a multi-story medical building. Residential development of this small undeveloped lot would further the express purpose of the R-6 zone and could not conceivably

change the character of the neighborhood nor have any unreasonably detrimental effect on the existing use or value of any abutting properties.

*3. The practical difficulty is not the result of action taken by the applicant or a prior owner.*

Our title search in the Cumberland County Registry of Deeds reveals that the property has had the same boundaries and legal description since at least 1927, well before the City's 1957 adoption of the Ordinance. Neither New Day Farm nor any prior owner has taken steps to create an undersized lot, and the high development costs dictating the minimum building size and multi-unit nature of the development to yield a reasonable return are purely the result of market forces.

*4. No other feasible alternative is available to the applicant, except a variance.*

The development of the property for commercial use or other less intensive non-residential permitted use in the R-6 Zone is simply not economically viable because of the property's small footprint. A practical difficulty variance with regard to minimum lot size, maximum lot coverage and minimum lot area per dwelling unit for a multi-family residential use is the only feasible development alternative.

*5. The granting of a variance will not have an unreasonably adverse effect on the natural environment.*

The property is currently a small vacant lot within a densely developed urban environment, with a road network and utility infrastructure serving the neighborhood already in place. Multi-family residential development made possible by granting the requested variances will have no noticeable adverse effect upon the natural environment.

*6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.*

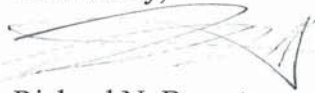
The property is located upon the shoulder of the Western Prom and is not located within any State-defined or City-defined shoreland area, shoreland zone or flood hazard zone.

Finally, should the Board grant these variances as requested, New Day Farm would ask that pursuant to Ord. Section 14-147(e) the Board provide for up to two years for the variances to remain valid. This request is made because it remains an unfortunate fact of life that the process for obtaining development permits in the City today, even for such a relatively small project as is proposed for this property, is proving to be extraordinarily long because of the crowded dockets for public hearings and unusual burdens upon municipal staff within the various relevant departments.

Zoning Board of Appeals  
June 30, 2017  
Page 5

I look forward, along with the principals of New Day Farm, LLC, Jeffrey Rosenblatt and Debra Byers, to addressing the Board at your July 13, 2017 public meeting.

Yours truly,

A handwritten signature in black ink, appearing to read "Richard N. Bryant". The signature is stylized with a large, sweeping flourish that extends to the right and then loops back down.

Richard N. Bryant

Enclosures

cc: New Day Farm, LLC  
David Lloyd, Archetype Architects

4 RUSSELL STREET - ENCLOSURE LIST

Practical Difficulty Variance Application

\$100 Check for Application Fee

Deed into New Day Farm LLC (CCRD Bk 32044, Pg 36)

Copy of Tax Map Showing Lot (Map 54, Block D, Lot 1)

Survey of Existing Lot

Photo of Existing Lot

Conceptual Site Plan / Floor Plan of Proposed Building

Projected Construction Cost and Return

Owner Authorization



Michael A. Russell, MS, Director  
Permitting and Inspections Department

Ann Machado  
Zoning Administrator

**CITY OF PORTLAND**  
**ZONING BOARD OF APPEALS**  
**Practical Difficulty Variance Application**

**Applicant Information:**

**New Day Farm, LLC**

NAME

c/o Richard N. Bryant, Van Meer & Belanger

ADDRESS

215 Commercial St., Portland, ME 04101

207 871-7500 rbryant@vblawfirm.com

PHONE # & E-MAIL

**Owner**

APPLICANT'S RIGHT/TITLE/INTEREST

(EG; owner, purchaser, etc)

**R-6**

CURRENT ZONING DESIGNATION

**Subject Property Information:**

**4 Russell Street**

PROPERTY ADDRESS

**Map 54, Block D, Lot 1**

CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)

ADDRESS

PHONE # & E-MAIL

PRACTICAL DIFFICULTY VARIANCE  
FROM SECTION 14- 139(a)

**EXISTING USE OF PROPERTY:**

**Parking Lot**

**NOTE:** If site plan approval is required, attach preliminary or final site plan.

*The undersigned hereby makes application for a Practical Difficulty Variance as described above, and certifies that the information supplied herein is true and correct to the best of his OR her knowledge and belief.*

*NEW DAY FARM, LLC*

SIGNATURE OF APPLICANT

*Richard N. Bryant, Authorized Agent*

DATE

*5/31/17*

The following words have the meanings set forth below:

1. **Dimensional Standards**: Those provisions of the article which relate to lot area, lot coverage, frontage and setback requirements
2. **Practical Difficulty**: A case where strict application of the dimensional standards of the Ordinance to the property for which a variance is sought, would BOTH preclude a use of the property which is permitted in the zone in which it is located AND also result in significant economic injury to the applicant.
3. **Significant Economic Injury**: The value of the property, if the variance were denied, would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that the denial of the variance would mean the practical loss of all beneficial use of the land.

A Practical Difficulty Variance may not be used to grant relief from the provisions of Section 14-449 (Land Use Standards) to increase either volume or floor area, nor to permit the location of a structure, including, but not limited to, single-component manufactured homes, to be situated on a lot in a way which is contrary to the provisions of this article.



Notwithstanding the provisions of subsections 14-473(c)(1) and (2) of this section, the Zoning Board of Appeals (ZBA) may grant a variance from the dimensional standards of this article when strict application of the provisions of the Ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:

“Practical Difficulty” variance standards pursuant to Portland City Code §14-473(c)(3):

1. The need for the variance is from dimensional standards of the Land Use Zoning Ordinance (lot area, lot coverage, frontage, or setback requirements).

Satisfied \_\_\_\_\_ NOT Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

2. Strict application of the provisions of the ordinance would create a ***Practical Difficulty***, meaning it would both (1) preclude a use of the property which is permitted in the zone in which it is located, and also (2) would result in significant economic injury to the applicant. (*“Significant Economic Injury” means the value of the property, if the variance was denied, would be substantially lower than its value if the variance were granted.*) To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.

Satisfied \_\_\_\_\_ NOT Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

3. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)  
Reason and supporting facts:

4. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use, or fair market value, of abutting properties.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)  
Reason and supporting facts:

5. The practical difficulty is not the result of action taken by the applicant or a prior owner.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)  
Reason and supporting facts:

6. No other feasible alternative is available to the applicant, except the variance.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

7. The granting of a variance will not have an unreasonably adverse effect on the natural environment.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

8. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. §435, nor within a shoreland zone or flood hazard zone.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

## Russell Street Project Projection:


Construction costs at @ \$225/sq. ft.	Sale price	Minus commission	Net profit
<b><u>Three Units as proposed</u></b>			
Unit 1 390 ft <sup>2</sup>	\$245,000	.04	
Unit 2 1209ft <sup>2</sup>	\$425,000	.04	
Unit 3 1460ft <sup>2</sup>	\$475,000	.04	
Total gross SF (including garage) 4159ft <sup>2</sup>			
<b>\$933,775.00</b>	<b>\$1,145,000.00</b>	<b>\$1,099,000.00</b>	<b>\$165,000.00</b>
<b><u>Two Units (minus efficiency unit)</u></b>			
Total gross SF (including garage) 3,769ft <sup>2</sup>			
<b>\$848,025.00</b>	<b>\$900,000.00</b>	<b>\$864,000.00</b>	<b>\$16,000.00</b>

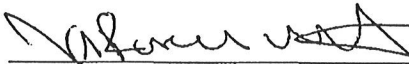
**QUITCLAIM DEED WITHOUT COVENANT**  
(Maine Statutory Short Form)

**DR. JEFFREY ROSENBLATT** ("Grantor"), FOR CONSIDERATION PAID, grants to **NEW DAY FARM, LLC**, a Maine limited liability company having a mailing address of 11 McQuillian's Hill Drive, Gorham, Maine 04038 ("Grantee"), certain real property located in the City of Portland, County of Cumberland, State of Maine, and more particularly described on Exhibit A attached hereto and made a part hereof by reference.

Meaning and intending to convey the same premises conveyed by Deed from 66 Bramhall Realty LLC to 119 Gannett Drive Associates, LLC dated March 21, 2012 and recorded in the Cumberland County Registry of Deeds in Book 29480, Page 232.

WITNESS my hand and seal this 26<sup>th</sup> day of January, 2015.

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Dr. Jeffrey Rosenblatt

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

January 26, 2015

PERSONALLY APPEARED the above-named Dr. Jeffrey Rosenblatt and acknowledged the foregoing instrument to be his free act and deed.

Before me,

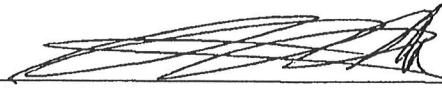
  
\_\_\_\_\_  
Notary Public/Attorney-at-Law  
Name: *Richard N. Bryant, Esq.*  
My Commission Expires:

EXHIBIT A

A certain lot or parcel of land situated at the intersection of Hill Street and Russell Street located in the City of Portland, County of Cumberland and State of Maine and more particularly described as follows:

Beginning at the intersection of the Southwesterly sideline of Hill Street and the Southeasterly sideline of Russell Street;

Thence S 36° 00' 00" E along said Hill Street 38.00 feet to land now or formerly of Elizabeth F. Sheriff;

Thence S 55° 38' 00" W along said Sheriff land 50.00 feet to land now or formerly of Martin J. Joyce et al.;

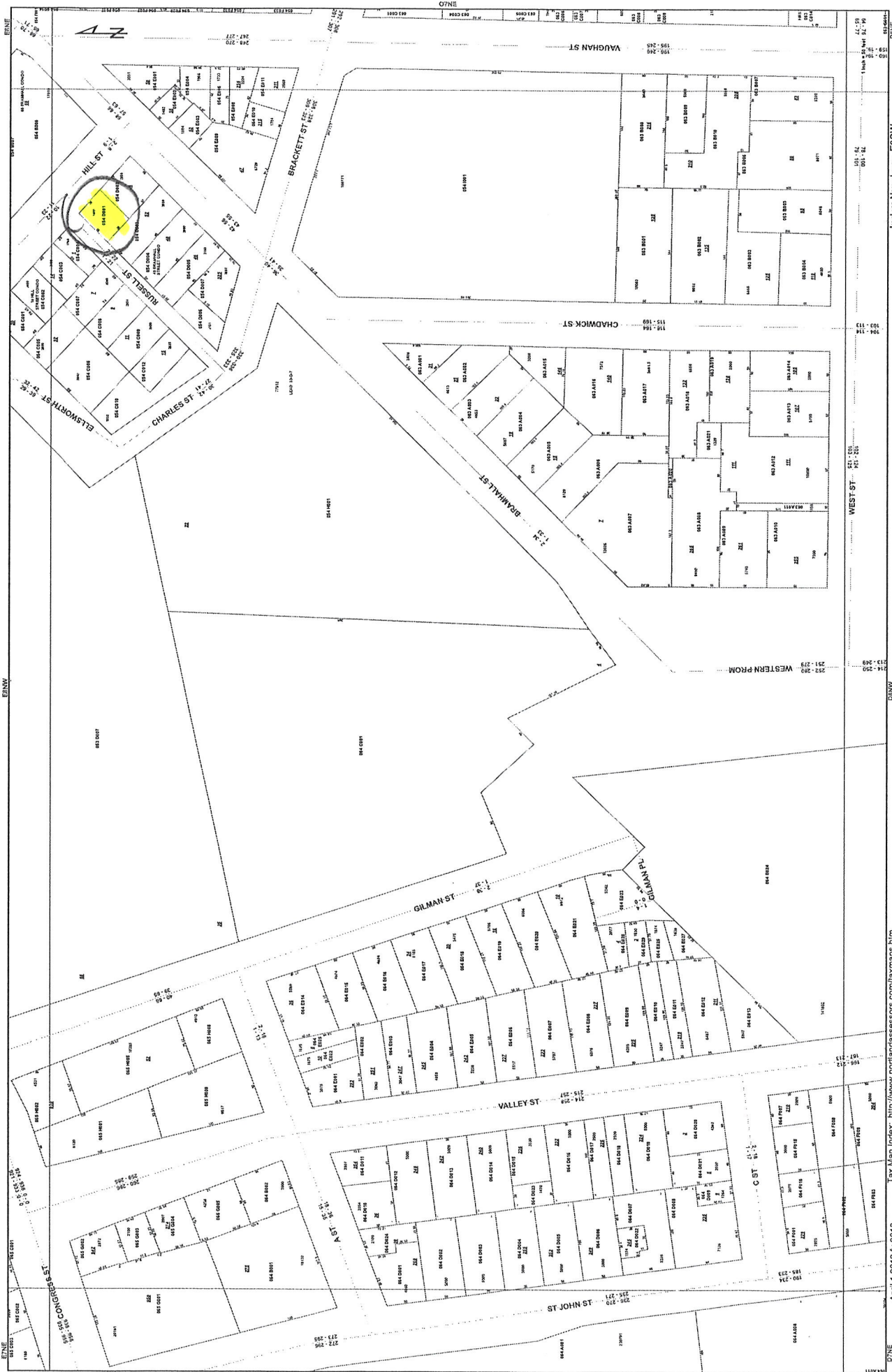
Thence N 36° 00' 00" W along said Joyce land 38.00 feet to said Southeasterly sideline of Russell Street;

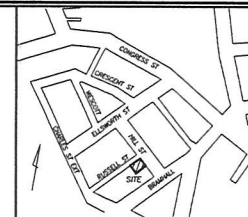
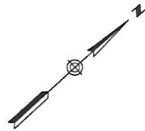
Thence N 55° 38' 00" E along said sideline of Russell Street 50.00 feet to the point of beginning, containing 1900 square feet and being delineated on a plan entitled "Plan of Land in Portland, Maine for Maine Cardiology Assoc." by Owen Haskell, Inc.

Bearings are magnetic based upon the year 1850 ±.

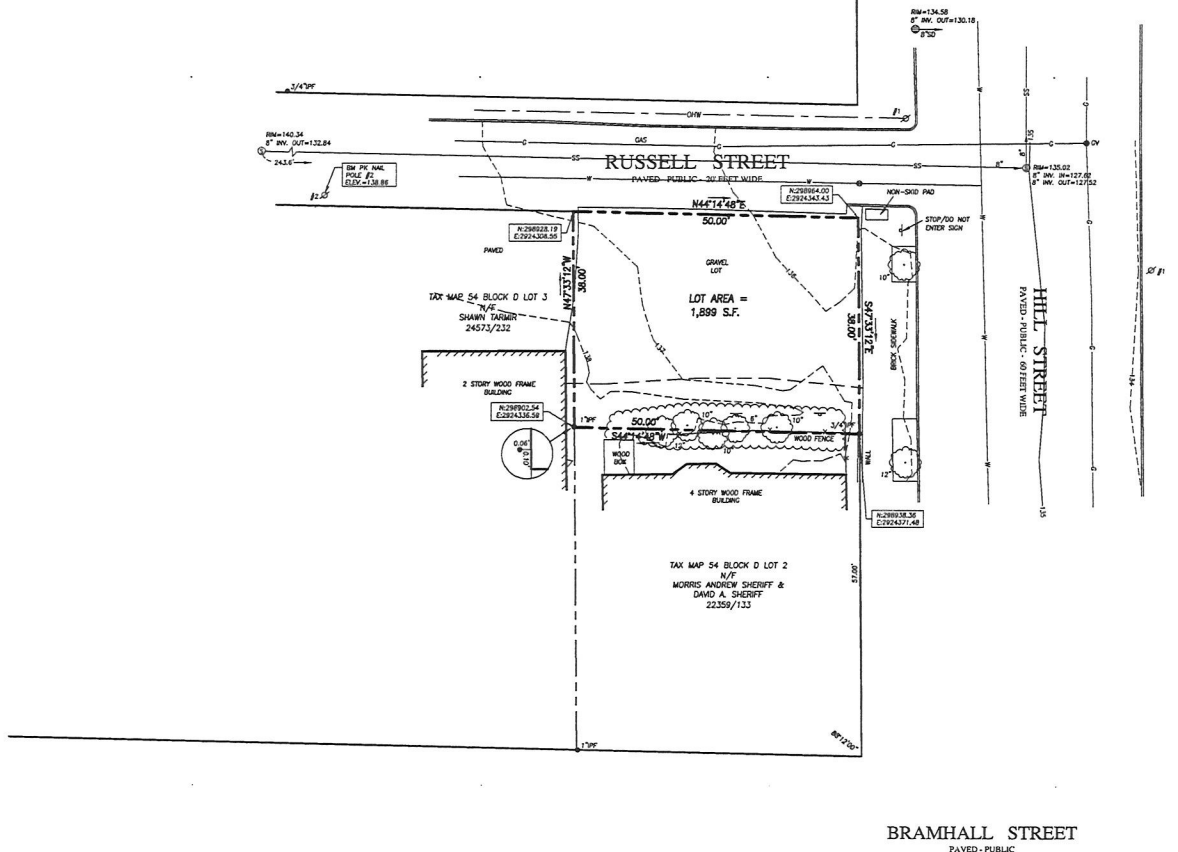
Received  
Recorded Register of Deeds  
Jan 23, 2015 03:00:59P  
Cumberland County  
Nancy A. Lane

4 Russell St.





LOCATION MAP  
N.T.S.



**LEGEND**

- IRON PIPE OR ROD FOUND
- MONUMENT FOUND
- UTILITY POLE
- MANHOLE
- SIGN
- CATCH BASIN
- GAS VALVE
- WATER VALVE OR SHUTOFF
- LIGHT POLE
- DECIDUOUS TREE
- FENCE
- CURB
- OVERHEAD WIRES
- WATER LINE
- GAS LINE
- STORM DRAIN
- SANITARY SEWER
- 1' CONTOUR
- N/F
- NOW OR FORMERLY DEED BOOK AND PAGE

**UTILITY NOTE**

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. CALL 1-888-OCSEWER AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION. DUE TO OSHA CONFINED SPACE REQUIREMENTS, ALL INVERTS AND PIPE SIZES MUST BE VERIFIED PRIOR TO ANY CONSTRUCTION.

**PLAN REFERENCES**

- "CONDOMINIUM PLAN, RUSSELL STREET FLATS CONDOMINIUM, 11 RUSSELL STREET, PORTLAND, MAINE MADE FOR RECORD OWNER MICHAEL J. FRIEDLAND" APRIL 15, 2014 BY OWEN HASKELL, INC.
- "PLAN OF LAND IN PORTLAND, MAINE FOR MAINE CARDIOLOGY ASSOC." DATED SEPTEMBER 9, 1980 BY OWEN HASKELL, INC.
- CITY OF PORTLAND STREET BLUE SHEETS.

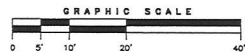
**GENERAL NOTES**

- OWNER OF RECORD: NEW DAY FARM, LLC  
TAX MAP 54 BLOCK D LOT 1  
C.C.R.D. BOOK 32044 PAGE 38
- BEARINGS ARE BASED ON MAINE STATE PLANE COORDINATE SYSTEM MAINE WEST HAZEL CITY POINTS 7124-26-1562 & 7124-26-1248 HELD.
- ELEVATIONS BASED ON CITY DATUM. CITY BENCHMARK: 3' O/S MONUMENT AT THE NORTH EAST CORNER OF MELLEN AND CLUMBERLAND STREET ELEVATION = 74.46 LBB36 PAGE 48.
- THE PROPERTY IS LOCATED IN THE CITY OF PORTLAND R6 ZONE.

**CERTIFICATE**

OWEN HASKELL, INC. HEREBY CERTIFIES THAT THIS PLAN IS BASED ON, AND THE RESULT OF, AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSEE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE.

DATE \_\_\_\_\_ JOHN W. SWAN, PLS NO. 1030



REV. 11-6-7-16 ADJUST ELEVATIONS

**BOUNDARY & TOPOGRAPHIC SURVEY**  
AT  
4 RUSSELL STREET, PORTLAND, MAINE  
MADE FOR  
**NEW DAY FARM, LLC**  
158 SHERIDAN STREET, UNIT 3A, PORTLAND, MAINE

**OWEN HASKELL, INC.**  
PROFESSIONAL LAND SURVEYORS  
390 U.S. ROUTE ONE, FALMOUTH, ME 04103 (207) 774-0434

Drawn By: JS	Date: JUNE 1, 2016	Job No.: 2016-1269
Trace By: JLV	Scale: 1" = 10'	Draw. No.: 1
Check By: JWS		
Book No.: 1145		



Google Maps 4 Russell St



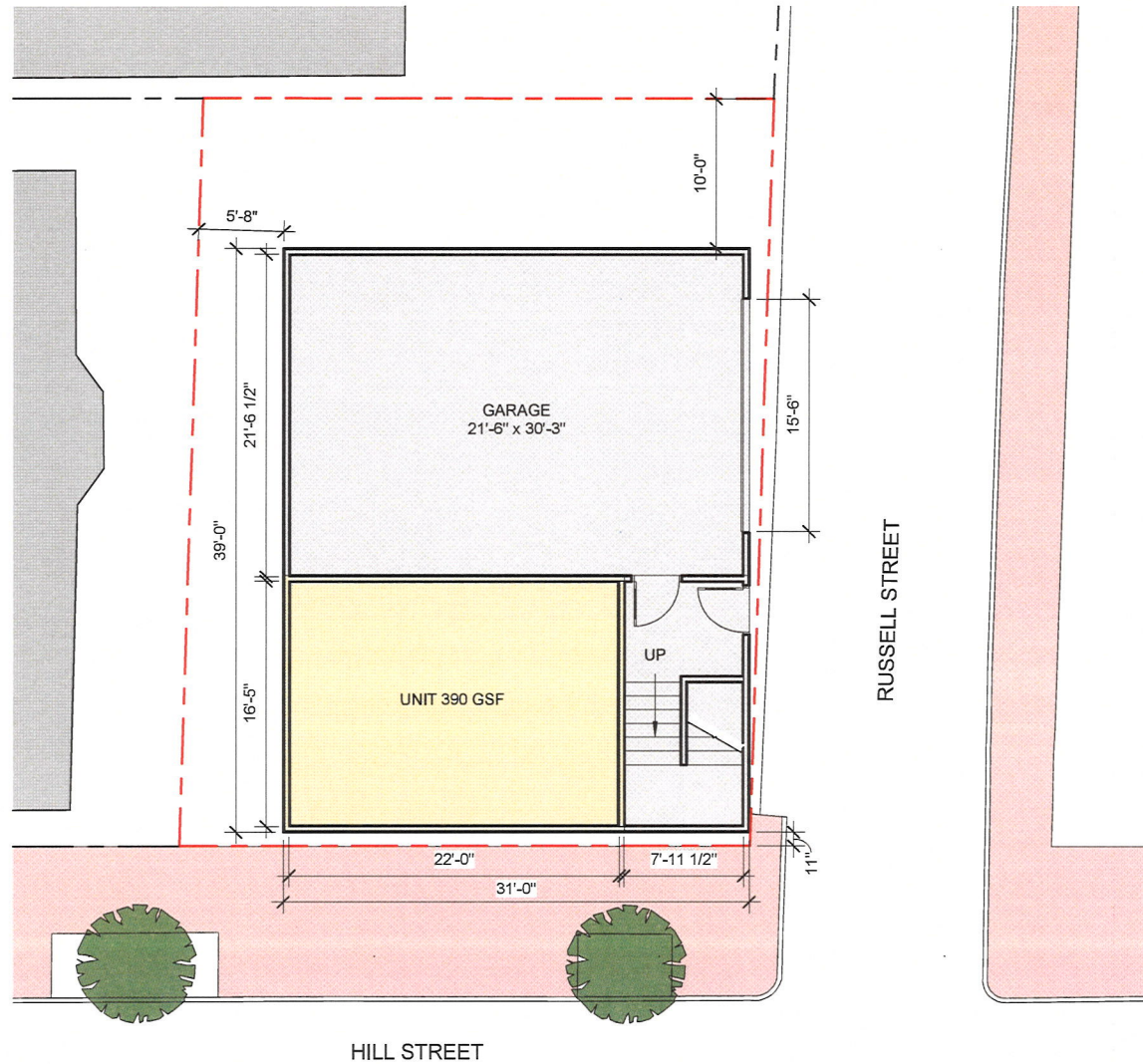
Image capture: Jul 2011 © 2017 Google

Portland, Maine

Street View - Jul 2011

3 UNIT RESIDENTIAL BUILDING  
 1 - 390 SF EFFICIENCY UNIT  
 1 - 1,066 SF UNIT  
 1 - 1,456 SF UNIT

3 STORIES WITH MEZZANINE  
 TOTAL GROSS SF - 4,159 SF  
 BUILDING FOOTPRINT - 1,209 SF  
 LOT SIZE - 1,899 SF  
 TOTAL LOT COVERAGE - 64%



1 | 1ST FLOOR  
 1/8" = 1'-0"

<b>ARCHETYPE</b> Architects 48 Union Wharf, Portland, Maine 04101 (207) 772-6022 - Fax (207) 772-4056		Architect
		Scale: 1/8" = 1'-0"
Date: 02/23/17	FIRST FLOOR PLAN	
Project:	4 RUSSELL ST 4 RUSSELL ST PORTLAND, ME 04102	
<h1>A1.1</h1>		

NEW DAY FARM, LLC  
136 Sheridan Street, #3A  
Portland, ME 04101

June 30, 2017

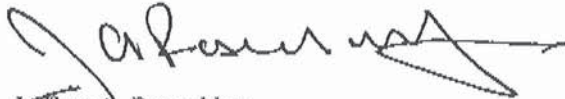
Zoning Board of Appeals  
City of Portland  
389 Congress Street  
Portland, ME 04101

RE: 4 Russell Street - Map 54, Block D, Lot 1

Dear Sir or Madam:

This letter is to confirm that Richard N. Bryant, Esq., of Van Meer & Belanger, is authorized to represent New Day Farm, LLC in connection with the practical difficulty variance application for New Day Farm LLC's property at 4 Russell Street (Map 54, Block D, Lot 1). This matter is scheduled for the Zoning Board of Appeals meeting on July 13, 2017.

Yours truly,



Jeffrey A. Rosenblatt  
Manager, New Day Farm, LLC